

EDWARD J. MARKEY

7TH DISTRICT, MASSACHUSETTS

ENERGY AND COMMERCE COMMITTEE

RANKING MEMBER

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET

SELECT COMMITTEE ON
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February 23, 2004

The Honorable Alan Greenspan
Chairman
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551

The Honorable William Donaldson
Chairman
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0609

The Honorable John D. Hawke, Jr.
Comptroller
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219

The Honorable James E. Gilleran
Director
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

The Honorable Timothy J. Muris
Chairman
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Dennis Dollar
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

The Honorable James E. Newsome
Commodities Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington DC 20581

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

The Honorable Ernst N. Csiszar
President
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

Dear Sirs:

I am writing to express my concern about the lack of privacy protection that appears to be afforded to American citizens when their personal data is out-sourced and sent off-shore by U.S. companies or other persons.

Recent press reports suggest that many U.S. companies are allowing some of the most intimate personal data they have collected about American citizens -- the most sensitive being individually-identifiable financial and medical information -- to be transferred off-shore for analysis or processing. This off-shoring of data appears to be carried out by a wide range of companies, including those in the financial services industry.

I am concerned that highly sensitive data is increasingly being made available to overseas workers for transaction processing, billing, or analysis without the knowledge or informed consent of the American public. The public does not know that personal financial and medical and other sensitive information is being outsourced to companies in India, China, Russia, Vietnam, the Philippines, Malaysia and the Czech Republic or elsewhere, and that these countries may lack adequate privacy protection environments and may effectively be beyond the reach of U.S. privacy laws and regulations and U.S. law enforcement.

The threat to personal privacy represented by such actions is not merely theoretical. According to press reports, last year a Pakistani woman who had been hired as a subcontractor to perform medical transcription work for a Texas company engaged as an outsourcing firm for a California hospital threatened to post sensitive patient medical records on the Internet unless she received certain payments she claimed were due to her. Press reports indicate that the Pakistani woman actually posted one file onto the Internet, demonstrating her willingness to carry out her threat if her demands were not met.

This incident highlights the fact that information technology jobs, back office data processing and data analysis jobs, certain financial services sector jobs and some highly technical medical

interpretation jobs that used to be performed by Americans, are being out-sourced to off-shore locations by companies seeking to take advantage of the dramatically lower wages available in Third World countries. I am concerned that in their rush to cut costs and increase their bottom line, these companies may be sacrificing the privacy protections the law affords to American citizens by transferring sensitive information to off-shore companies that are outside of the reach of U.S. privacy law beyond the jurisdiction of U.S. regulators.

I therefore request that you explain what steps are being undertaken by your agency to protect the privacy of personal information collected about American citizens by companies or other persons subject to your oversight and supervision. Specifically, I request your assistance and cooperation in providing responses to the following questions:

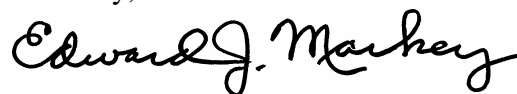
1. Please provide a list indicating which of the companies or other persons subject to your jurisdiction (pursuant to the privacy provisions of the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act (FCRA), or other applicable provisions of law) transfer nonpublic consumer personal financial information to offshore affiliates or subsidiaries for processing, analysis, billing, maintaining or servicing a customer account, providing a product or service to a customer, or for any other purpose.
2. Please provide a list indicating which of the companies subject to your jurisdiction pursuant to the privacy provisions of the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act or other applicable provision of law, transfer consumer financial information to unaffiliated third parties for processing, analysis, billing, or any other purpose.
3. For each of the companies listed in your responses to questions 1 and 2, please provide a chart listing the purposes for which such information is transferred to such offshore affiliates, subsidiaries, or unaffiliated third parties.
4. For each of the companies listed in your responses to questions 1 and 2, please provide a chart listing the categories of information transferred to such offshore affiliates, subsidiaries, or unaffiliated third parties, including: 1) name of consumer; 2) address of consumer; 3) account numbers; 4) Social Security numbers; 5) account balances; 6) transactional or experiential information about consumer; 7) birth date of consumer; 8) credit scoring information relating to consumer; 9) names, addresses or other information regarding spouse or dependent children of consumer; and 10) any other categories of commonly collected and transferred information relating to the consumer.
5. For each of the companies listed in your responses to questions 1 and 2, please provide a chart indicating: 1) whether the consumer was provided with a prior disclosure by the company of the fact that the consumer's nonpublic personal information could be transferred to an affiliate or non-affiliated party located in a foreign country; 2) the implications of such a transfer for the consumer's privacy rights and enforcement of those rights; and, 3) whether the consumer was provided with an opportunity to direct that such information not be disclosed – either by way of an “opt-out” or an “opt-in”. In a separate column, indicate whether the failure to provide such notice or consent rights was based on the exemption contained in Section 502(b)(2) of GLBA, Section 502(e)(1) of GLBA, or any other exemption provided for in GLBA, the FCRA, or any other provision of law (please provide citation).
6. For each of companies listed in your response to questions 1 and 2, please indicate what your agency (or organization) has done to ensure that such companies are complying with the requirements of Section 501 of the Gramm-Leach-Bliley Act, which requires each

financial institution to establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of customer records and information, protect against any anticipated threats or hazards to the security or integrity of such records, and to protect against unauthorized access to or use of such records or information?

7. For each of the companies listed in your response to questions 1 and 2, please indicate how many inspections or examinations your agency (or organization) has conducted in each of the years since GLBA was enacted to determine whether outsourcing of nonpublic personal information to off-shore or foreign affiliates or unaffiliated third parties by the company may have resulted in unauthorized disclosure of or unauthorized access to or use of such information.
8. For each of the companies listed in your response to questions 1 and 2, please indicate whether any enforcement actions have been undertaken by your agency (or organization) to address violations of the privacy provisions of GLBA, or, if applicable, the FCRA.
9. In the event that an offshore company affiliated with a person subject to your jurisdiction violated any of the privacy provisions of GLBA (or if applicable, the FCRA), what authorities would your agency have to bring legal action against such persons? What authority would you have to bring an enforcement action against a rogue employee of such a company for violations committed in foreign countries?
10. In the event that an offshore outsourcing company not affiliated (by common ownership or control) with a person subject to your jurisdiction violated any of the privacy provisions of GLBA (or if applicable, the FCRA or other applicable provision of law), what authorities would your agency (or organization) have to bring legal action against such persons? What authority would you have to bring an enforcement action against a rogue employee of such a company for violations committed in foreign countries?
11. What legal rights and remedies does the individual whose privacy has been violated or compromised by an offshore entity or person have in the event that such offshore entity or person violates the privacy protections of GLBA or the FCRA?
12. Given the constraints on your agencies' (or organization's) ability to supervise, regulate, examine and inspect, or undertake enforcement actions against non-U.S. persons or companies domiciled offshore for violations of U.S. financial privacy laws and regulations, do you believe that a prohibition or other severe limitations should be placed on the ability of U.S. firms to transfer nonpublic personal information about American consumers to such foreign entities or persons? If not, why not? If so, what actions has your agency (or organization) taken to put such protections in place?

Thank you for your assistance in providing responses to these questions. If you have any questions about this inquiry, please feel free to have your staff contact Mr. Jeffrey S. Duncan or Dr. Michael Bailey of my staff at 202-225-2836.

Sincerely,

A handwritten signature in black ink that reads "Edward J. Markey". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Edward J. Markey
Member of Congress